

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
) No. 08 CR 888
v.) Hon. James B. Zagel
)
ROD BLAGOJEVICH, et al.)

**GOVERNMENT'S FILING REGARDING
SECOND SUPERSEDING INDICTMENT**

The United States of America, by and through PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully submits the following filing regarding the Second Superseding Indictment, stating as follows:

I. DISCUSSION

At the status hearing held on December 16, 2009, the Court requested that, should the grand jury return a Second Superseding Indictment, the government file a brief on the Second Superseding Indictment and attach the briefs filed in the Supreme Court related to *Weyhrauch v. United States*.

On February 4, 2010, the grand jury returned a Second Superseding Indictment in the instant case. The Second Superseding Indictment maintains all of the original charges against defendant Rod Blagojevich and defendant

Robert Blagojevich.¹

The new charges in the Second Superseding Indictment are based on the same underlying criminal conduct that supported the charges in the superseding indictment. However, because the defendants' illegal conduct violated multiple criminal statutes, additional statutes are charged in the Second Superseding Indictment.

The Second Superseding Indictment presents the following eight new charges against various defendants.

Count One charges defendant Rod Blagojevich with substantive racketeering in violation of Title 18, United States Code, Section 1962(c).

Count Fourteen charges defendant Rod Blagojevich with attempted extortion of United States Congressman A and United States Congressman A's brother, in violation of Title 18, United State Code, Section 1951.

Count Sixteen charges defendant Rod Blagojevich with bribery in relation to the Chief Executive Officer of Children's Memorial Hospital, and Children's Memorial Hospital, in violation of Title 18, United States Code, Section 666.

Count Eighteen charges defendant Rod Blagojevich and defendant Alonzo Monk with conspiracy to commit bribery in relation to Racetrack Executive, in

¹ The Second Superseding Indictment does not name William F. Cellini, Sr. as a defendant and it is the government's current intention to proceed to trial against defendant Cellini based on the previously returned indictments.

violation of Title 18, United States Code, Section 371.

Count Twenty charges defendant Rod Blagojevich with bribery in relation to Construction Executive, in violation of Title 18, United States Code, Section 666.

Count Twenty-One charges defendant Rod Blagojevich and defendant Robert Blagojevich with conspiracy to commit extortion in relation to the appointment of a United States Senator, in violation of Title 18, United States Code, Section 1951.

Count Twenty-Two charges defendant Rod Blagojevich and defendant Robert Blagojevich with attempted extortion in relation to the appointment of a United States Senator, in violation of Title 18, United States Code, Section 1951.

Count Twenty-Three charges defendant Rod Blagojevich, defendant Robert Blagojevich, and defendant John Harris with conspiracy to commit bribery in relation to the appointment of a United States Senator, in violation of Title 18, United States Code, Section 371.²

² Certain counts have been renumbered from the superseding indictment to the Second Superseding Indictment: Count One of the superseding indictment (racketeering conspiracy) is now Count Two of the Second Superseding Indictment. Counts Two through Twelve of the superseding indictment (wire fraud) are now counts Count Three through Thirteen of the Second Superseding Indictment. Count Sixteen of the superseding indictment (attempted extortion of Chief Executive
(continued...)

Regarding *Weyhrauch*, per the Court's request, the *Weyhrauch* briefing is attached to this filing as Government Exhibits A, B, and C. The Second Superseding Indictment is fashioned in such a way that, should the Supreme Court rule Title 18, United States Code, Section 1346 unconstitutional, the charges, or section of charges, of the Second Superseding Indictment related to Section 1346 can be easily dismissed. Such dismissal would do little to effect the trial in the instant case as the underlying illegal conduct charged in the Section 1346 counts is alleged in other counts of the Second Superseding Indictment.³

²(...continued)

Officer of Children's Memorial Hospital and Children's Memorial Hospital) is now Count Fifteen of the Second Superseding Indictment. Count Seventeen of the superseding indictment (extortion conspiracy related to Racetrack Executive) remains Count Seventeen in the Second Superseding Indictment. Count Eighteen of the superseding indictment (attempted extortion of Construction Executive) is now Count Nineteen in the Second Superseding Indictment. Count Nineteen of the superseding indictment (false statements to the FBI) is now Count Twenty-Four in the Second Superseding Indictment.

³ Defendants Harris and Monk have been charged with violating statutes that will be unaffected by the *Weyhrauch* decision and are not dependent on the validity of Section 1346. Neither defendant Harris nor defendant Monk are expected to proceed to trial on the new charges.

Accordingly, other than effecting the number of counts under consideration by the jury, the *Weyhrauch* decision should have minimal effect on the instant case.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: s/Reid Schar
REID J. SCHAR
CHRISTOPHER S. NIEWOEHNER
CARRIE E. HAMILTON
Assistant United States Attorneys
219 S. Dearborn Street, 5th Floor
Chicago, Illinois 60604
(312) 353-5300

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following documents:

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SECOND SUPERSEDING INDICTMENT**

were served on February 4, 2010, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

s/Reid Schar
REID SCHAR
Assistant United States Attorney
219 S. Dearborn Street
Chicago, IL 60604
(312) 353-8897